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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

REGENTS OF THE UNIVERSITY OF
MINNESOTA,

Plaintiff,

vs.

LSI CORPORATION and AVAGO
TECHNOLOGIES U.S. INC.,

Defendants.

Case No.: 5:18-cv-00821-EJD-NMC

**PLAINTIFF'S REPLY IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Date: December 12, 2024
Time: 9:00 am
Courtroom: 4

Hon. Edward J. Davila
Trial Date: March 25, 2025

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UMN’S REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff Regents of the University of Minnesota (“UMN”) files this memorandum in reply to Defendants’ Opposition to Plaintiff’s Motion for Partial Summary Judgment (“Opposition,” Dkt. 335-3) and in support of UMN’s Motion for Partial Summary Judgment (“Motion,” Dkt. 310).

LSI’s arguments in its Opposition are irreconcilably inconsistent with the undisputed facts and compel granting UMN’s Motion. On invalidity, LSI tries to fend off IPR estoppel solely on the false premise that it could not raise the Soljanin Oct. ’95 Paper in the IPR because the Paper post-dates UMN’s asserted May 1995 conception date. But LSI indisputably based its IPR petition on UMN being entitled to an April 1996 invention date. The PTAB in fact instituted the IPR based upon a reference (Tsang) dated between the Soljanin Oct. ’95 Paper and April 1996, so LSI plainly also could have raised the *earlier* Soljanin Oct. ’95 Paper in its IPR. Given these undisputed facts, IPR estoppel applies here.

Further, in response to UMN demonstrating in its Motion the fatal deficiencies of LSI’s contention that Dr. Soljanin reduced to practice an invalidating invention, LSI sidesteps the undisputed facts by excerpting snippets of Dr. Soljanin’s testimony about what she “may have” done. As shown below, her testimony does not come close to satisfying LSI’s burden of proving invalidity by clear and convincing evidence. And LSI’s explanation for Dr. Soljanin’s alleged reduction to practice is mere attorney argument without supporting evidence.

On inequitable conduct, LSI has abandoned its claim that Prof. Moon should have disclosed the Soljanin Oct. ’95 Paper to the PTO (because he did). LSI now relies solely on its fanciful story that Prof. Moon fraudulently hid Dr. Soljanin’s supposed status as a joint inventor from the PTO. LSI’s argument is fatally flawed because (1) there is no evidence—let alone corroborating evidence—of any collaboration among Drs. Soljanin, Moon, and Brickner such that Dr. Soljanin could be a joint inventor, and (2) if Dr. Soljanin’s story is true, then she declined to be named a joint inventor, and Prof. Moon did as she asked, disproving any deceptive intent on his part.

1 **I. IPR ESTOPPEL APPLIES TO SOLJANIN’S OCT. ’95 PAPER AND ALLEGED**
 2 **“INVENTION”**

3 **A. LSI Indisputably Could Have Raised the Soljanin Oct. ’95 Paper in the IPR**

4 LSI does not contest the undisputed evidence establishing that the alleged Soljanin
 5 “invention” is materially identical to the technical details disclosed in the Soljanin Oct. ’95 Paper.
 6 Indeed, LSI musters only one supposed non-technical difference between the two: “the former is
 7 prior art to Dr. Moon and Dr. Brickner’s alleged May 1995 invention date, while the latter is not.”
 8 Opp. 16. LSI then asserts it can avoid estoppel because it could not have raised the Soljanin Oct. ’95
 9 Paper in the IPR since it was published after May 1995. *Id.* This argument is pure misdirection that
 10 ignores what actually happened in the IPR and the plain language of the IPR estoppel statute.
 11 Because the IPR’s operative prior art cut-off date was April 5, 1996, not May 1995, LSI indisputably
 12 could have raised the Soljanin Oct. ’95 Paper as prior art in the IPR. As a result, IPR estoppel
 13 attaches to both the Paper and Dr. Soljanin’s concededly materially identical alleged “invention.”

14 When LSI filed its IPR petition, LSI asserted that the claims of the ’601 Patent were entitled
 15 to priority of ***no earlier than April 5, 1996***, the date of the filing of UMN’s provisional patent
 16 application. *See LSI Corp., et al. v. Regents of Univ. of Minn. (“LSI IPR”),* IPR2017-01068, Paper 1
 17 at 7 (PTAB Mar. 10, 2017) (“[T]he claims of the ’601 patent are entitled to an effective filing date
 18 no earlier than April 5, 1996.”); Dkt. 310-2, Joint Statement of Undisputed Facts (“JSUF”) ¶ 5. The
 19 PTAB instituted the IPR based upon LSI’s assertion, as evidenced by the fact that one of the prior art
 20 references on which the PTAB instituted, U.S. Patent No. 5,731, 768 (“Tsang”), was published in
 21 February 1996—***four months after the Soljanin Oct. ’95 Paper but prior to the April 5, 1996***
 22 ***priority date.*** *See LSI IPR*, Paper 1 at 37–56, 65–69. The IPR estoppel statute explicitly applies to
 23 patent or printed publication prior art that the petitioner “raised or reasonably could have raised
 24 during that inter partes review.” 35 U.S.C. § 315(e)(2). In “that inter partes review” at issue here,
 25 LSI expressly petitioned for and the IPR was instituted on the basis of an April 1996 priority date for
 26 the ’601 Patent. As its own actions show, LSI certainly ***could have raised*** the Soljanin Oct. ’95
 27 Paper, which predates April 1996, in that IPR. *See Return Mail, Inc. v. U.S.P.S.*, 587 U.S. 618, 623
 28 (2019) (stating the IPR estoppel statute allows a petitioner to challenge a patent “in light of ‘patents
 or printed publications’ existing at the time of the patent application”). Had LSI done so, any

1 assertion that the Paper invalidates the '601 Patent would have been resolved during the IPR, as was
 2 the case with Tsang. Tsang predated the April 1996 priority date asserted by LSI in the IPR, as does
 3 the Soljanin Oct. '95 Paper. UMN asserted in the IPR that Tsang did not invalidate the '601 Patent
 4 because, among other things, "Drs. Moon and Brickner completed their invention prior to the
 5 January 1996 filing date of Tsang." *LSI IPR*, Paper 58 at 35 (PTAB Apr. 14, 2021). If LSI had
 6 raised the Soljanin Oct. '95 Paper, UMN would have made the same argument in response. Thus,
 7 whether that Paper is invalidating prior art would (and should) have been resolved during the IPR, as
 8 was Tsang, but LSI chose not to raise it. LSI must live with that choice and its result—IPR estoppel
 9 indisputably applies to the Soljanin Oct. '95 Paper.¹

10 **B. LSI Concedes the Soljanin Oct. '95 Paper and Alleged Prior "Invention" Are**
 11 **"Materially Identical"**

12 The Court should not permit LSI to evade the application of estoppel to the Soljanin Oct. '95
 13 Paper. The purpose of IPR estoppel would be undercut if LSI is permitted to back-door the Soljanin
 14 Oct. '95 Paper as a purportedly invalidating prior art reference in this litigation by asserting the
 15 materially identical Soljanin "invention." *See* Mot. 13–16. LSI does not contest that the "materially
 16 identical" substantive standard should apply here. *See* Mot. 15 n.8; Opp. 15–16. Thus, IPR estoppel
 17 applies to Dr. Soljanin's alleged invention if "all of the material limitations of that [invention] were
 18 disclosed in a patent or printed publication" that could have been raised in the IPR. *Boston Sci.*
 19 *Corp. v. Cook Grp. Inc.*, 653 F. Supp. 3d 541, 594 (S.D. Ind. 2023). This uncontested legal principle
 20 makes perfect sense. Permitting LSI to evade the consequences of IPR estoppel by "simply
 21 swapping labels" from a printed publication that could have been raised in the IPR to a prior
 22 invention that is indistinct from that printed publication "in order to 'cloak' its prior art ground and
 23 'skirt' estoppel" would undermine the entire purpose of allowing the IPR to move forward while this
 24 litigation was stayed. *See Cal. Inst. Tech. v. Broadcom Ltd.*, No. CV 16-3714-GW(AGRx), 2019

25
 26 ¹ In its Motion, UMN explained that it is entitled to summary judgment on LSI's invalidity defenses
 27 based on Tsang. Mot. 6 n.3. LSI's Opposition does not discuss Tsang at all, let alone rebut UMN's
 28 arguments, and so LSI concedes UMN is entitled to summary judgment as to Tsang.

1 WL 8192255, at *6–7 (C.D. Cal. Aug. 9, 2019) (allowing litigants to evade IPR estoppel prevents
 2 IPR from fulfilling “its mission of streamlining patent litigation in the district courts and promoting
 3 efficient dispute resolution”), *aff’d* 25 F.4th 976 (Fed. Cir. 2022). Indeed, when LSI asked this
 4 Court to stay proceedings pending resolution of the IPR, LSI itself touted that the IPR would
 5 simplify the issues in this case. Dkt. 191, at 10. Among other reasons, LSI asserted that the IPR
 6 “may give rise to estoppel.” *Id.* LSI was right.

7 It is undisputed that there are no differences, let alone material differences, between the
 8 Soljanin Oct. ’95 Paper and Dr. Soljanin’s alleged invention. LSI did not even address, let alone
 9 contest, Dr. Soljanin’s testimony cited in UMN’s Motion establishing that the two are identical. *See*
 10 Mot. 15. In fact, in its own Opposition, LSI **confirms** the Soljanin Oct. ’95 Paper and Dr. Soljanin’s
 11 alleged invention are materially identical when, in an attempt to corroborate Dr. Soljanin’s alleged
 12 invention, LSI points the Court to the Soljanin Oct. ’95 Paper. Opp. 10–14.

13 LSI made a deliberate choice **not** to raise the Soljanin Oct. ’95 Paper in the IPR, even though
 14 LSI indisputably was aware of it and Dr. Soljanin was LSI’s paid IPR expert witness. JSUF ¶¶ 14–
 15 20. Because LSI could have raised the Soljanin Oct. ’95 Paper in the IPR but chose not to, LSI must
 16 live with the consequences of its choice—that LSI now also is estopped from asserting Dr.
 17 Soljanin’s alleged invention as invalidating prior art in this litigation. LSI’s decision not to raise the
 18 Soljanin Oct. ’95 Paper despite employing Dr. Soljanin as its expert speaks volumes about its
 19 attempt now to argue that the Soljanin “invention” actually anticipates the Asserted Claims.

20 **II. LSI CANNOT PROVE DR. SOLJANIN INVENTED ANYTHING**

21 Even if it were not estopped from asserting Dr. Soljanin’s alleged invention as prior art, LSI
 22 confirms in its Opposition that it cannot carry its burden to show, by clear and convincing evidence,
 23 that Dr. Soljanin reduced her supposed “invention” to practice. *See Phase Four Indus., Inc. v.*
 24 *Marathon Coach Inc.*, No. C 04-04801 JW, 2005 WL 2676887, at *8–12 (N.D. Cal. Oct. 20, 2005)
 25 (granting summary judgment for patentee on § 102(g) (pre-AIA) invalidity defense where challenger
 26 “failed to present evidence, which if, believed by a trier of fact, could prove by clear and convincing
 27 evidence that it reduced the invention disclosed in the [patent] to practice”).

28 LSI relies upon only two supposed sources of proof to support Dr. Soljanin’s alleged

1 reduction to practice: (i) Dr. Soljanin’s testimony and (ii) the Soljanin Oct. ’95 Paper. Neither is
 2 sufficient to defeat summary judgment. Dr. Soljanin’s testimony is based solely on speculation and
 3 supposed general practices that cannot meet LSI’s clear and convincing evidentiary burden. But
 4 even if her testimony were unequivocal, it is entirely uncorroborated, and so is legally insufficient
 5 because an alleged inventor’s testimony “must be corroborated by independent evidence.” *Cooper*
 6 *v. Goldfarb*, 154 F.3d 1321, 1330 (Fed. Cir. 1998). Finally, LSI cannot rely on the Soljanin Oct. ’95
 7 Paper to corroborate Dr. Soljanin’s testimony on reduction to practice because there is no evidence
 8 that the paper reflects implementation of a code that practices each step of the Asserted Claims.

9 **A. Dr. Soljanin’s Testimony Does Not Establish Reduction to Practice**

10 Dr. Soljanin’s weak and equivocal testimony in 2024 cannot constitute clear and convincing
 11 evidence that she reduced to practice anything at all some 29 years earlier in 1995. LSI asserts that
 12 Dr. Soljanin “testified that she designed an encoder that would limit the number of consecutive
 13 transitions in magnetic recording and she and her colleagues performed computer simulations of the
 14 same[.]” Opp. 12, but in fact, her testimony says nothing of the sort. Instead, she repeatedly
 15 speculated and hedged under oath:

- 16 • “Q. Did you design an encoder for a code that would limit the number of consecutive
 17 transitions? . . . A. I believe – yeah. I believe in the term of my tenure at Bell Labs, I
 18 believe I did, but -- Q. And when was that? A. I don’t remember. Right. But this code
 19 later became very popular, important. Everyone who produced chips had them. ***So this***
 20 ***is just guessing*** based on that.” Dkt. 310-15 at 66:21–67:5 (emphasis added).
- 21 • “A. What do I recall now about encoder I designed? ***I’d have to recall – nothing.***” *Id.*
 22 at 67:12–15 (emphasis added).
- 23 • ***“I don’t remember writing simulations.”*** *Id.* at 68:2–6 (emphasis added).
- 24 • “Q. So in the simulations that you performed, was there a limit on the number of
 25 consecutive transitions? A. ***I don’t remember. If I performed simulations in this***
 26 ***context***, it must have been, because what else was I simulating?” *Id.* at 69:22–70:2
 27 (emphasis added).
- 28 • “[Q.] What are you going to tell the jury you were simulating? . . . A. So I – I have very
 little recollection of what happened 30 years ago. Again, as I said, very, very little. ***So***
I’m not going to say, oh, I know in this particular code on that particular day I
simulated this and that. No. I remember some bits and pieces. If that’s useful for this
 case, so be it.” *Id.* at 70:3–16 (emphasis added).

- 1 • “I think I talked about everything I remember about possible simulations. *I didn’t even*
2 *say I performed simulations. I said it would be very likely to perform simulations.*” *Id.*
3 at 70:19–71:1 (emphasis added).
- 4 • “Q. Did you ever implement it? A. *I personally have never done an implementation.* .
5 . . . Q. Did anybody implement it at your direction? A. At my direction? At this time? Q.
6 Ever? A. *I didn’t direct anyone ever.*” *Id.* at 73:8–19 (emphases added).
- 7 • “Q. Did you ever implement a code in NRZI that limits the runs of successive 1s to 3?
8 A. *I did not implement code. I did theoretical work.* Q. Did you ever simulate a code –
9 A. Simulation – very likely I did. . . . It’s been about 30 years ago, so I don’t remember.
10 Q. What – tell me everything you remember about those simulations. . . . A. I cannot
11 tell you anything except that everything I did theoretically I eventually simulated. That
12 was the general practice[.]” *Id.* at 74:20–75:15 (emphasis added).
- 13 • “I cannot tell you I simulated every single thing and by this line and this and that
14 problem. No. It was just a general practice that I did.” *Id.* at 76:2–5.

15 Dr. Soljanin testified she did not know whether she performed *any* simulations, let alone
16 whether any such speculative simulations would have practiced every step of the Asserted Claims.
17 Her testimony is unavoidably vague at best, contradicts LSI’s claims at worst, and falls far short of
18 the clear and convincing evidence that LSI needs to prove that she reduced her alleged invention to
19 practice. *See Sensor Elec. Tech., Inc. v. Bolb, Inc.*, No. 18-CV-05194-LHK, 2019 WL 4645338, at
20 *43 (N.D. Cal. Sept. 24, 2019) (clear and convincing evidence must show fact is “highly and
21 substantially likely to be true [rather] than untrue”); *Phase Four Indus.*, 2005 WL 2676887, at *8–12
22 (granting summary judgment for patentee on § 102(g) (pre-AIA) invalidity defense where challenger
23 presented “no evidence beyond that of the uncorroborated declaration of the alleged inventor”).

24 **B. Dr. Soljanin’s Testimony Must Be Corroborated**

25 Beyond the fatal deficiencies in Dr. Soljanin’s testimony, LSI’s argument fails for another
26 independent reason: it cannot corroborate her testimony as the law requires. *See Cooper*, 154 F.3d at
27 1330. LSI relies on two arguments on corroboration: (1) Dr. Soljanin “is a disinterested witness”
28 such that her testimony “does not require corroboration,” Opp. 14, and (2) the Soljanin Oct. ’95
Paper constitutes corroboration. LSI is wrong on both.

1 **1. Even Disinterested Witnesses Must Be Corroborated**

LSI is wrong on the law of corroboration. Opp. 14–15. The Federal Circuit has held

1 unequivocally that when validity is challenged under § 102(g) (pre-AIA) “corroboration is required
 2 of **any witness** whose testimony alone is asserted to invalidate a patent, regardless of his or her level
 3 of interest[.]” including so-called “[u]ninterested witnesses.” *Finnigan Corp. v. ITC*, 180 F.3d 1354,
 4 1367 (Fed. Cir. 1999) (emphasis added). LSI does not address *Finnigan* in its Opposition, choosing
 5 instead to rely solely on *Thomson, S.A. v. Quixote Corp.*, 166 F.3d 1172 (Fed. Cir. 1999). LSI’s
 6 reliance on *Thomson* is misplaced. *Finnigan* post-dates *Thomson*, and clarified that *Thomson* did not
 7 address “the question of the **necessity** of corroboration vel non, but rather the **sufficiency** of the
 8 corroborating evidence[.]” *Finnigan*, 180 F.3d at 1368–69 (emphases added). *Finnigan* has been
 9 cited more than 200 times, and the Federal Circuit reaffirmed its holding on corroboration in
 10 *Finnigan* as recently as March 2023. *See Philip Morris Prods. S.A. v. ITC*, 63 F.4th 1328, 1352–53
 11 (Fed. Cir. 2023). This Court also relied upon *Finnigan*’s corroboration holding this summer. *See*
 12 *Unicorn Energy AG v. Tesla Inc.*, No. 21-cv-07476-BLF, 2024 WL 3463356, at *4 (N.D. Cal. July
 13 17, 2024). LSI’s silence on *Finnigan* speaks volumes.

14 “[T]he need for corroboration exists regardless whether the party testifying concerning the
 15 invalidating activity is interested in the outcome of the litigation (*e.g.*, because that party is the
 16 accused infringer) or is uninterested **but testifying on behalf of an interested party. . . . Uninterested**
 17 **witnesses are also subject to the corroboration requirement.**” *Finnigan*, 180 F.3d at 1367
 18 (emphasis added). As a matter of law, Dr. Soljanin’s testimony on reduction to practice must be
 19 corroborated, whether or not she is a disinterested witness.

20 2. Dr. Soljanin Is an Interested Witness

21 LSI also wrongly asserts that Dr. Soljanin is a disinterested witness. In doing so, LSI
 22 conveniently ignores that Dr. Soljanin’s involvement in this case began as LSI’s paid expert, at \$420
 23 an hour, to provide expert declarations and testimony on both (i) claim indefiniteness, *see* Dkt. 204-
 24 4, and (ii) anticipation as LSI’s expert in its IPR.² After LSI dropped indefiniteness and its IPR
 25 failed, LSI transformed Dr. Soljanin into a supposed prior inventor and fact witness based upon
 26

27 ² Dr. Soljanin also testified as an expert for LSI in the pending litigation *Carnegie Mellon University*
 28 *v. LSI Corp., et al.*, No. 3:18-cv-04571-JD (N.D. Cal.).

work that she did not even bother to assert as invalidating in the IPR. As the U.S. Supreme Court explained more than 100 years ago: “‘Witnesses whose memories are prodded by the eagerness of interested parties to elicit testimony favorable to themselves are not usually to be depended upon for accurate information,’ and therefore such testimony rarely satisfies the burden upon the interested party, usually the accused infringer, to prove invalidity by clear and convincing evidence.” *Finnigan*, 180 F.3d at 1366 (quoting *Washburn & Moen Mfg. Co. v. Beat ‘Em All Barbed-Wire Co.*, 143 U.S. 275, 284 (1892)). LSI also appears to assert that because Dr. Soljanin does not have a direct financial interest in the outcome of the case, she cannot be an interested witness. That too is wrong. There are multiple ways that a witness can be interested in the outcome of a case, including the accomplishment of being found to be first in the field. *See Finnigan*, 180 F.3d at 1368. Indeed, Dr. Soljanin testified that MTR codes “later became very popular, important. Everyone who produced chips had them[,]” Dkt. 310-15 at 67:2–5, such that it would be a professional accomplishment to be known as the inventor of those codes.

C. There Is No Evidence Tying Figure 1 of the Soljanin Oct. ’95 Paper to Reduction to Practice of the Asserted Claims

LSI does not have any independent evidence to corroborate that Dr. Soljanin reduced her alleged invention to practice, as required by § 102(g). *See Solvay S.A. v. Honeywell Int’l Inc.*, 742 F.3d 998, 1000 (Fed. Cir. 2014) (“Making the invention [pursuant to § 102(g)] requires conception and reduction to practice.”). LSI claims in its Opposition that Figure 1 in the Soljanin Oct. ’95 Paper “show[s] the performance of the [read] channel when Prof. Soljanin’s invention is implemented,” Opp. 11, but that is mere attorney argument that cannot carry LSI’s burden. *See Invitrogen Corp. v. Clontech Lab ’ys, Inc.*, 429 F.3d 1052, 1068 (Fed. Cir. 2005) (“Unsubstantiated attorney argument regarding the meaning of technical evidence is no substitute for competent, substantiated expert testimony.”); *see also Zimmer Tech., Inc. v. Howmedica Osteonics Corp.*, 476 F. Supp. 2d 1024, (N.D. Ind. 2007) (rejecting “wholly conclusory assertions” by attorneys in lieu of “expert testimony explaining the scope and meaning of” evidence proffered to support conception and reduction to practice). LSI does not, and cannot, point to any fact or expert testimony that explains Figure 1. LSI does not, and cannot, point to any fact or expert witness who testified that the curve shown in Figure

1 1 reflects implementation of a code that limits consecutive transitions. LSI does not, and cannot,
2 point to any fact or expert witness who testified that the curve was generated using a method that
3 practices all elements of the Asserted Claims. Indeed, Dr. Soljanin herself testified that the curve
4 **does not** refer to a code that limits consecutive transitions. Dkt. 310-15 at 71:16–72:5 (“[A.] [The
5 Soljanin Oct. ’95 Paper] says, the analytical results of this paper together with the simulation results
6 obtained by Sayiner, 8 and 9, allow us to compare the systems, et cetera. . . . Q. And that sentence
7 you just read does not refer to any code that limits consecutive transitions, correct? A. This
8 sentence does not refer to – yes.”).

9 Moreover, the simulation results identified in the Soljanin Oct. ’95 Paper were obtained by
10 Necip Sayiner, not by Dr. Soljanin. See Dkt. 310-17 at -064 (“The analytical results of this paper
11 **together with the simulation results obtained by Sayiner** allow [us] to compare the systems on the
12 basis of their off-track performance.” (emphasis added)); Dkt. 310-15 at 71:16–25 (characterizing
13 the simulations reflected in Figure 1 as “simulations done elsewhere”). Once again, there is no fact
14 or expert testimony in the record as to how Mr. Sayiner obtained the simulation results reflected in
15 the Soljanin Oct. ’95 Paper, including whether they were obtained by practicing the Asserted
16 Claims. LSI did not depose or offer a declaration from Mr. Sayiner, LSI’s technical expert, Dr.
17 Koralek, did not even bother to review the Sayiner papers cited in the Soljanin Oct. ’95 Paper, JSUF
18 ¶ 65, and Dr. Soljanin did not have the cited Sayiner papers in her files. Dkt. 310-15 at 13:10–17:7.
19 Simply put, LSI has absolutely no evidence to establish how Mr. Sayiner ran his simulations, let
20 alone that those simulations implemented the methods of the Asserted Claims.

21 Finally, even if there were evidence that the curve in Figure 1 reflected the implementation of
22 a code that limits consecutive transitions, the curve could not constitute corroboration that Dr.
23 Soljanin reduced to practice all of the steps of the Asserted Claims. See *Genentech, Inc. v. Insmad*
24 *Inc.*, 436 F. Supp. 2d 1080, 1092 (N.D. Cal. 2006) (“Reduction to practice occurs when the inventors
25 perform a process that satisfies all of the limitations of the claim, and determine that it will work for
26 its intended purpose.”); *Cooper*, 154 F.3d at 1330 (similar). For example, the Asserted Claims recite
27 that the *j* and *k* constraints are imposed on an encoded, recorded waveform. See Dkt. 310-3 at cl. 13.
28 LSI’s own expert, Dr. Koralek, admits that the curve in Figure 1 does not show use of a recorded

1 waveform and was generated “just from the mathematics.” Dkt. 310-14 at 91:5–16 (“[T]here was no
 2 recorded waveform in obtaining those analytical results[.]”). Dr. Soljanin confirmed that she did not
 3 implement any encoder using a recorded waveform. Dkt. 310-15 at 68:15–20 (“Q. And did those
 4 computer simulations involve writing data to a recording media? A. Not recording media. It’s just
 5 writing 0s and 1s, making errors in the – in – in the sequence that’s supposed to be recorded. That’s
 6 simulation. *It’s not recording media.*” (emphasis added)); *id.* at 70:19–71:1 (“*I didn’t even say I*
 7 *performed simulations.* I said it would be very likely to perform simulations.” (emphasis added));
 8 *id.* at 74:20–23 (“Q. Did you ever implement a code in NRZI that limits the runs of successive 1s to
 9 3? A. I did not implement code. I did theoretical work.”). Because LSI cannot prove by clear and
 10 convincing evidence that the Soljanin Oct. ’95 Paper shows a reduction to practice of the
 11 “invention,” the paper cannot corroborate Dr. Soljanin’s testimony.

12 **III. LSI CANNOT PROVE INEQUITABLE CONDUCT**

13 LSI does not address, and therefore has abandoned, its inequitable conduct claim based upon
 14 an alleged failure to disclose the Soljanin Oct. ’95 Paper to the PTO. *See* Opp. 17–25. LSI now
 15 bases its entire inequitable conduct claim on Prof. Moon’s supposed “failure to identify Dr. Soljanin
 16 as an inventor” on the ’601 Patent. *Id.* at 19. LSI’s only support for the assertion that Dr. Soljanin
 17 could be a joint inventor is her self-serving, uncorroborated testimony that on some unknown date, at
 18 some unknown place and time, Prof. Moon purportedly approached her and asked her to be a joint
 19 inventor. *See* Dkt. 335-5 at 60:17–63:18, 82:2–85:21. It is undisputed that Dr. Soljanin and Prof.
 20 Moon had never met each other before this conversation allegedly occurred, *see id.* at 84:21–85:2;
 21 Dkt. 335-6 at 60:16–19, and Prof. Moon himself testified that he never suggested to anyone that Dr.
 22 Soljanin should be listed as a joint inventor on the ’601 Patent. *See* Dkt. 335-6 at 62:19–25. Yet
 23 LSI would have this Court believe that it is not only plausible but is highly likely that Prof. Moon
 24 approached a total stranger out of the blue to volunteer that he should list her as an inventor on work
 25 where Prof. Moon had collaborated only with Dr. Brickner, and which would have given her rights
 26 to both his work and resulting monetary benefits, all of this at a time when, according to LSI, he was
 27 fixated on maximizing his own financial gain. Leaving aside the implausibility of that scenario,
 28 LSI’s reliance on this supposed conversation ultimately disproves its inequitable conduct claim.

1 **A. LSI Utterly Ignores the Materiality Requirement of Inequitable Conduct**

2 LSI states that “inventorship is highly material to patentability[.]” Opp. 18 (capitalization
3 altered), but inexplicably fails to recite the legal standards for inventorship and, specifically, the
4 necessary requirements for Dr. Soljanin to be a joint inventor on the ’601 Patent. LSI’s failure is
5 critical because, if Dr. Soljanin does not qualify as a joint inventor under the law, Prof. Moon could
6 not have withheld **material** information about inventorship from the PTO. LSI’s own cited cases
7 confirm this. *See, e.g., TecSec, Inc. v. IBM*, 763 F. Supp. 2d 800, 811 (E.D. Va. 2011), *aff’d* 466 F.
8 App’x 882 (Fed. Cir. 2012) (“The proper inventorship of a claimed invention is highly material to
9 patentability, and misrepresentations regarding inventorship, **if true**, could easily render a patent
10 unenforceable due to inequitable conduct.” (emphasis added)); *Advanced Magnetic Closures, Inc. v.*
11 *Rome Fastener Corp.*, 607 F.3d 817, 828 (Fed. Cir. 2010) (“[W]hen named inventors deliberately
12 conceal a **true inventor’s** involvement, the applicants have committed inequitable conduct and the
13 patent is unenforceable[.]” (emphasis added)); *Frank’s Casing Crew & Rental Tools, Inc. v. PMR*
14 *Techs., Ltd.*, 292 F.3d 1363, 1376 (Fed. Cir. 2002) (confirming purported joint inventor “was an
15 inventor of the patented device”); *PerSeptive Biosys., Inc. v. Pharmacia Biotech, Inc.*, 225 F.3d
16 1315, 1319 (Fed. Cir. 2000) (confirming “no dispute between the parties” that purported joint
17 inventors “worked in close collaboration with the named inventors”). Under the legal standard
18 governing joint inventorship, LSI cannot carry its burden.

19 “To be a joint inventor, one must: ‘(1) contribute in some significant manner to the
20 conception or reduction to practice of the invention, (2) make a contribution to the claimed invention
21 that is not insignificant in quality, when that contribution is measured against the dimension of the
22 full invention, and (3) do more than merely explain to the real inventors well-known concepts and/or
23 the current state of the art.’” *Dana-Farber Cancer Inst. v. Ono Pharm. Co.*, 964 F.3d 1365, 1371
24 (Fed. Cir. 2020) (quoting *Pannu v. Iolab Corp.*, 155 F.3d 1344, 1351 (Fed. Cir. 1998)). “Joint
25 inventorship under section 116 can only arise when collaboration or concerted effort occurs—that is,
26 when the inventors have some open line of communication during or in temporal proximity to their
27 inventive efforts[.]” *Eli Lilly & Co. v. Aradigm Corp.*, 376 F.3d 1352, 1359 (Fed. Cir. 2004);
28 *Kimberly-Clark Corp. v. Procter & Gamble Distrib. Co.*, 973 F.2d 911, 917 (Fed. Cir. 1992)

1 (“[J]oint inventorship under Section 116 requires at least some quantum of collaboration or
 2 connection.”). There is not one iota of evidence that Dr. Soljanin and the named inventors of the
 3 ’601 Patent ever collaborated in any way related to the ’601 Patent. Nor is there any evidence
 4 corroborating Dr. Soljanin’s alleged status as a joint inventor beyond her own self-interested
 5 testimony and LSI’s attorneys’ arguments. *See Plastipak Packaging, Inc. v. Premium Waters, Inc.*,
 6 55 F.4th 1332, 1340 (Fed. Cir. 2022) (“In connection with assertions of joint inventorship, meeting
 7 that standard requires alleged joint inventors to ‘prove their contribution to the conception with more
 8 than their own testimony concerning the relevant facts.’” (quoting *Gemstar-TV Guide Int’l, Inc. v.*
 9 *ITC*, 383 F.3d 1352, 1382 (Fed. Cir. 2004))).

10 To the contrary, Prof. Moon and Dr. Brickner were a professor and graduate student,
 11 respectively, at the University of Minnesota when they conceived of the invention of the ’601 Patent,
 12 while Dr. Soljanin worked at Bell Labs. Mot. 4; Opp. 1. Prof. Moon and Dr. Brickner began their
 13 work in the spring of 1995, independent of Dr. Soljanin. Dr. Soljanin and Prof. Moon agree they
 14 never met each other before Dr. Soljanin claims that Prof. Moon approached her about supposedly
 15 being a “joint inventor.” *See* Dkt. 335-5 at 84:21–85:2; Dkt. 335-6 at 60:16–19. Dr. Soljanin alleges
 16 that Prof. Moon, at some unknown date, time, and location, asked her to be a joint inventor on the
 17 application for what would become the ’601 Patent and that they discussed her “work,” in an
 18 apparent reference to the Soljanin Oct. ’95 Paper. Even if this improbable conversation actually
 19 occurred, the Soljanin Oct. ’95 Paper on its face confirms that Dr. Soljanin is not a joint inventor of
 20 the inventions claimed in the ’601 Patent. In that paper’s conclusion, Dr. Soljanin states, “Design of
 21 high rate codes which improve both on- and off-track error probability performance of Class 4
 22 channels is, however, ***an interesting open problem.***” Dkt. 310-17 at -064. That is the open problem
 23 the ’601 Patent solved. “One who merely suggests an idea of a result to be accomplished, rather
 24 than means of accomplishing it, is not a joint inventor.” *Garrett Corp. v. U.S.*, 422 F.2d 874, 881
 25 (Ct. Cl. 1970), *cert. denied sub nom. U.S. v. Garrett Corp.*, 400 U.S. 951 (1970). Dr. Soljanin may
 26 have agreed on the problem to be solved, but she obviously had no part in conceiving or reducing to
 27 practice Prof. Moon and Dr. Brickner’s patented solution to that problem.

28 LSI cannot prove by clear and convincing evidence that Dr. Soljanin is a joint inventor and

1 that Prof. Moon and Dr. Brickner, therefore, withheld this material information from the PTO. LSI's
 2 failure forecloses its inequitable conduct counterclaim and affirmative defense. *See Ist Media, LLC*
 3 *v. Elec. Arts, Inc.*, 694 F.3d 1367, 1372 (Fed. Cir. 2012) ("A failure of proof on any element
 4 precludes a finding of inequitable conduct.").

5 **B. An Intent to Deceive the PTO Is Not the Single Most Reasonable Inference**

6 Nor can LSI prove, by clear and convincing evidence, the legally required element of a
 7 specific intent to deceive the PTO. *See Sensor Elec. Tech.*, 2019 WL 4645338, at *43; *Therasense v.*
 8 *Becton, Dickinson & Co.*, 649 F.3d 1276, 1287 (Fed. Cir. 2011). Specific intent to deceive can be
 9 found only where it is "the *single most reasonable inference* able to be drawn from the evidence."
 10 *Therasense*, 649 F.3d at 1290–91 (emphasis added). "[T]he evidence 'must be sufficient to require a
 11 finding of deceitful intent in the light of all of the circumstances.' Hence, when there are multiple
 12 reasonable inferences that may be drawn, intent to deceive cannot be found." *Id.*

13 Under the undisputed facts, LSI cannot demonstrate that the "single most reasonable
 14 inference" is that Prof. Moon intended to deceive the PTO by not identifying Dr. Soljanin as a joint
 15 inventor. LSI's argument to the contrary can be disposed of by one line from its own Opposition—
 16 "*Professor Soljanin declined this invitation* [to be a joint inventor]." Opp. 17. It is just as
 17 reasonable an inference, if not more so, that Prof. Moon simply took Dr. Soljanin at her word when
 18 she declined his purported invitation, regardless of her reason for declining. "In evaluating intent,
 19 the district court must consider evidence that the patent applicant[] withheld information from the
 20 PTO *in good faith*." *Advanced Magnetic Closures*, 607 F.3d at 829 ("A district court may not draw
 21 an inference of bad faith when a party has plausible reasons for withholding information: mere intent
 22 to withhold does not support an inference of intent to deceive.") (emphasis added). These facts and
 23 those cited in UMN's Motion regarding Prof. Moon's belief of his prior invention date show that
 24 LSI cannot clearly and convincingly prove that the "single most reasonable inference" is that Prof.
 25 Moon specifically intended to deceive the PTO by not identifying Dr. Soljanin as a joint inventor.

26 **C. LSI's Personal Attacks on Prof. Moon Are Irrelevant (and Wrong)**

27 Unable to address the legal insufficiencies of its inequitable conduct claim, LSI resorts to
 28 attacking Prof. Moon's character. *See* Opp. 8, 22–23 (characterizing Prof. Moon as "aggressive[,]")

1 “self-serving,” “hyper-zealous,” and chasing his “last shot at a windfall” (capitalization altered)).
2 While those ad hominem attacks are wholly irrelevant to the merits of LSI’s inequitable conduct
3 claim, UMN is compelled to briefly respond.

4 Prof. Moon started working at UMN in 1990 as an assistant professor in the Electrical and
5 Computer Engineering Department. Ex. 1, Declaration of Jaekyun Moon, at 2. There, he founded
6 the Communications and Data Storage Lab. *Id.* His educational and academic career has focused on
7 signal processing and coding technologies. *Id.* at 4. At the time of invention, Dr. Brickner was one
8 of Prof.’s Moon’s Ph.D. students at UMN. *Id.* at 2. While at UMN, Prof. Moon and Dr. Brickner
9 together invented the codes that are the subject of the ’601 Patent which they named “Maximum
10 Transition Run” (“MTR”) codes. *Id.* at 2. Prof. Moon and Dr. Brickner also wrote academic papers
11 about their invention. JSUF ¶¶ 24–28, 31–36. Their seminal paper about MTR codes, published in
12 1996, is frequently cited in patent applications and academic papers, including by LSI. In 1997,
13 Prof. Moon received a Technical Achievement Award from the National Storage Industry
14 Consortium for the very MTR codes that are the subject of the ’601 Patent. Ex. 1 at 5.

15 The importance of Prof. Moon and Dr. Brickner’s invention was not theoretical; as LSI
16 acknowledges in its Opposition, Prof. Moon was told on multiple occasions by colleagues in the
17 industry that “MTR code is in the read channel chips that are being shipped in large scale” by LSI.
18 *See* Opp. 8–10; Dkt. 335-20 at -235 (“I got together with a few hard disk drive read channel
19 engineers . . . MTR being in read channel chips seems to be a well-known fact around here.”); Dkt.
20 335-21 at -874 (“I am in the Silicon Valley for a few days and everyone is talking about the CMU-
21 Marvell suit on read channel chip technology. I am also hearing that LSI is nervous about UMN
22 knocking at its door any day now. MTR is in products for sure, and lots of people are curious about
23 my reaction to that.”). It certainly is not illegal, nor even nefarious, for a professor to request his
24 university to seek to license his invention for just compensation when a multinational corporation
25 like LSI makes millions of dollars by using his patented invention without permission.

26 LSI purports to connect its attempted character assassination to five cases which supposedly
27 found “inequitable conduct on similar facts.” Opp. 22. LSI’s citations are misleading—the facts of
28 those five cases could not be more dissimilar to the facts of this case, and LSI further smears Prof.

1 Moon by claiming they are the same. *See, e.g., Advanced Magnetic Closures*, 607 F.3d at 830
 2 (named inventor could not explain his claimed invention and fabricated evidence of conception and
 3 presented it to court); *Frank's Casing Crew & Rental Tools*, 292 F.3d at 1368 (true joint inventor
 4 was employee of two of the named inventors who “had no technical experience” in the discipline);
 5 *PerSeptive Biosys.*, 225 F.3d at 1319, 1321–22 (no dispute over close collaboration with purported
 6 joint inventor and named inventors committed “at least five specific instances of intentional
 7 falsehoods, misrepresentations, and omissions to the PTO” “made as a ‘persistent course’ of
 8 conduct”); *TecSec, Inc. v. IBM*, 763 F. Supp. 2d 800, 811–12 (E.D. Va. 2011), *aff’d* 466 F. App’x
 9 882 (Fed. Cir. 2012) (named inventor engaged in “the copying of claims from another’s patent
 10 application without disclosing that to the PTO Examiner”); *In the Matter of Certain Child Carriers*
 11 *& Components Thereof*, Inv. No. 337-TA-1154, at *59 (USITC 2020) (non-inventor signed patent
 12 application because both he and inventor wife “believed (albeit mistakenly) that having a U.S.
 13 citizen on the application would bolster the protection, strength, and permanence of the patents”).

14 Even if one believes LSI’s characterization of Prof. Moon’s motives, LSI’s story not only
 15 remains irrelevant to this Motion, it makes no sense at all. LSI asserts that Prof. Moon hid Dr.
 16 Soljanin’s status as a joint inventor from the PTO in order to reduce the number of co-inventors with
 17 whom he would have to split any money the ’601 Patent generated. Opp. 23. Yet LSI also would
 18 have this Court believe that Prof. Moon of his own accord approached Dr. Soljanin and solicited her
 19 to join the application for the ’601 Patent, in direct opposition to his supposed interest in cutting
 20 down on the number of people with whom he would need to split licensing revenues. This facial
 21 logical inconsistency undermines LSI’s argument that Prof. Moon intended to deceive the PTO and
 22 demonstrates that LSI has no evidence, let alone clear and convincing evidence, that the ’601 Patent
 23 is invalid for inequitable conduct.

24 **IV. CONCLUSION**

25 UMN respectfully requests that the Court grant its Motion for Partial Summary Judgment
 26 and dismiss with prejudice LSI’s counterclaims of invalidity under §§ 102 and 103 and inequitable
 27 conduct and LSI’s affirmative defenses on the same grounds.
 28

1 Dated: November 25, 2024

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record via the Court's ECF system on November 25, 2024.

/s/ Christopher M. Verdini
Christopher M. Verdini